IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5592 OF 2004

Shashikala S.Kalshetty & Ors. .. Petitioners.
Vs.
Rajendra M.Kalshetty & Ors. .. Respondents.

Mr.S.M.Sahastrabudhe i/b Mr.G.S.Godbole for the petitioners.
Mr.M.A.Utagikar for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 16TH FEBRUARY, 2005

P.C.:

. Heard Mr.Sahastrabuddhe, learned counsel for the petitioners and Mr.Utagikar, learned counsel for the respondents.

2. Rule, returnable forthwith.

3. Mr.Utagikar, learned counsel waives service for the respondents. By consent of the parties taken up for final hearing.

4. By the impugned order dated 28.4.2004 the trial court has rejected the application Exhibit 19 filed by the petitioners for setting aside "No W.S." order. In view of the recent amendment of

the Civil Procedure Code the trial court rejected the application relying upon the judgment of this court in **Iridium Indian Telecom Ltd. V. Motorola INC & Anr. 2004(1) Maharashtra Law Journal 532**. This court had an occasion to consider provisions of Order 8 Rule 1 in the case of **Shailaja A. Sawant V. Sayajirao Ganpatrao Patil 2004(2) Maharashtra Law Journal 419** wherein it was held that the provisions of Order 8 Rule 1 are directory in nature and, therefore, in the given case the court has powers to condone the delay in filing written statement after 90 days. The said judgment has been confirmed by the Division Bench of this Court in the case of **Chintaman Sukhdeo Kaklij & Ors. V. Shivaji Bhausaheb Gadhe & Ors. 2004(5) Bom.C.R. 573**. Keeping that in view, in my opinion, the appropriate course would be to direct the trial Court to consider application Exhibit 19 afresh in the light of the observations made by this court in **Shailaja Sawant's** case as also in **Chintaman S.Kaklij's** case. Hence the following order:

. The order dated 28.4.2004 impugned in the instant writ petition is set aside. The application Exhibit 19 stands restored to file.

The trial Court shall decide application Exhibit 19 afresh in the light of the observations made by this Court in the aforementioned judgments. Rule, accordingly, stands discharged.

. The petition is disposed of.

(D.B.Bhosale, J.)